Supreme Court, U.S.
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No. 05-744

IN THE SUPREME COURT OF THE UNITED STATES

PAUL SHUMPERT,

Petitioner,

v.

MANCOR, CAROLINA, INC.

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I. Where the Court finds that a Plaintiff has established a prima facie case of age discrimination at Summary Judgment, can the Court fail to find that an inference of age discrimination has been raised?

II. Where the Court finds that the record shows disparate treatment of an older worker as compared to a similarly situated younger worker, can the Court discount this finding of disparate treatment in determining whether the record presents facts sufficient to raise an inference of age discrimination?

III. Should the shifting burden test be used in a case, where the Defendant did not articulate a reason for having taken the particular adverse employment action at issue?

IV. Is evidence of disparate treatment evidence of pretext?

V. Can the Court still legitimately use the "pretext plus" standard for analysis of Civil Rights cases at Summary Judgment?

VI. **Is the fact that a particular supervisor (decision maker in an adverse employment action) had not taken overt action before the alleged adverse action, against an employee (Plaintiff) create, as a matter of law, the inference that the supervisor bore no unlawfully motivated animus against the Plaintiff?**

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OPINIONS BELOW

The Court of Appeals wrote an unpublished Opinion in this case, affirming based on the reasoning in the District Court Judge's Order filed on January 27, 2005. A copy of the unpublished Opinion is included in the Appendix, as is the Order of January 27, 2005 by Judge Cameron McGowan Currie, United States District Court Judge.

JURISDICTION

On September 13, 2005, the Appeals Court for the Fourth Circuit affirmed the District Court's dismissal of Mr. Shumpert's case on Summary Judgment. This Court Has Jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AT ISSUE

None.

STATE STATUTORY PROVISIONS AT ISSUE

None.

STATEMENT OF THE CASE

Mr. Shumpert began working for Mancor in November of 1995 as a quality inspector in a temporary position. He was selected for hire by Scott Laughead, then a supervisor in Quality inspection for Mancor. Dave Hollis, who was then the plant manager, approved the hire. At the time of his hire, he was sixty three years old. In 1996, Shumpert was laid off, as part of a reduction in force, but was later recalled to work for Mancor in 1997, returning to the position of quality inspector. He continued to work for Mancor in a permanent position until his termination on August 3, 1999. After Shumpert's recall, and prior to his termination, Hollis was replaced as plant manager by Dilip Teppara. Mr. Laughead was transferred to another department, and replaced with Duane Schnipke, who became Shumpert's supervisor several months prior to Shumpert's termination.

Shumpert was a good worker, while at Mancor, and was described as excellent by the plant manager, Mr. Teppara. Shumpert had good and cordial relationships with his supervisors.

Rodney Lloyd began working for Mancor in February of 1995. Lloyd was nick-named "Beaver," and is usually referred to by this name. In 1999, Lloyd was part of the Shipping Department at Mancor.

Mancor's plant produces steel parts. Shumpert would inspect the finished parts and

mark or "tag" them before Mr. Lloyd or another shipping worker would remove the part, either to the appropriate truck for shipping, or back to the line for more work (if the part did not pass inspection).Because of the fact that the shippers could not do their work until each part had been inspected, there was a natural antagonism between the quality inspector and the shipper. The shipper, of course, wanted the quality inspector to hurry up and tag the parts so that they could be moved, and the shipper could keep to the shipping schedules. The quality inspector wanted to take the time to do a thorough inspection, so he did not pass bad parts. Apparently, it was fairly common for quality inspectors and shippers working on the shifts to get into heated arguments over this type of thing.

In 1997, Lloyd was involved in an altercation with another employee, Melvin Sanders. The altercation involved Lloyd yelling profane statements and vulgarities at work. Sanders alleged that Lloyd had hit him during the altercation. Lloyd admitted to the battery when questioned by management. The Human Resources Manager, although Lloyd had admittedly hit another employee in anger, did not terminate Lloyd, but instead placed a disciplinary warning in Lloyd's file. The warning memorialized the incident, and stated that any further such behavior from Lloyd "would lead to termination." This was on May 14, 1997. About two months later, Mancor placed another note in Lloyd's file, which states, in describing Lloyd:

"volatile attitude (up/down) Selective dependability; manipulative; Fighting incident with Melvin; Open vulgarity ... Recommend – 90 day evaluation." Within a few months after this (late 1997), Lloyd was involved in another altercation, in which he threw a temporary worker against a wall. Rudy Blazek and Gerald McGee escorted the man (the temporary worker) from the premises. Lloyd was not terminated. Lloyd was later involved in yet another altercation, this time with a man named Caroll Watkins. Shumpert witnessed this altercation, which concluded with Lloyd leaving the scene before another physical altercation could erupt. A few months later, in April of 1998, in the presence of third a third party witness, who was a supervisor, David Count, Lloyd became involved in a heated exchange with Shumpert. Lloyd told Shumpert "I am not playing" while grabbing Shumpert's arm. Rather than terminating Lloyd (a supervisor had actually witnessed him attacking Shumpert), Mancor's management, Teppara, and the New HR Director had a conversation with Lloyd about his behavior, and submitted yet another written warning to his file.

Even after the incident during which Lloyd was actually observed physically assaulting Shumpert, Lloyd continued to physically abuse the much smaller and older Shumpert. (Lloyd outweighed Shumpert by more than a hundred pounds and was about a foot taller. He was also about twenty years Shumpert's junior). In one

instance, Lloyd grabbed Shumpert and physically removed him from a truck where he was working, then "roughed him around." Shumpert reported this attack to his supervisor, Duane Schnipke, Rudy Blazek, and to the HR director. Lloyd was not terminated, or disciplined in any way. Instead, Lloyd and Shumpert were ordered to go to their respective supervisors, rather than engage in arguments with one another.

In the late summer of 1999, after Shumpert had reported Lloyd's latest abuse, Shumpert's car received a long scratch down the side. Shumpert believed that Lloyd had done it, and reported this to Duane Schnipke, a supervisor. After Lloyd had clocked out for the day, one afternoon, Shumpert went to the door to watch Lloyd walk through the parking lot (to make sure that he did not scratch the car again. Lloyd came back to the plant and engaged in a verbal altercation with Shumpert. Shumpert called his supervisor, who intervened until Mr. Lloyd left the plant.

During the months prior to Shumpert's termination, Duane Schnipke, Shumpert's supervisor, asked Shumpert, on several occasions, when he would be retiring. Shumpert replied that he did not intend to retire any time soon.

On August 3, 2001, near the end of his shift, the Plaintiff found that he needed to move several pallets, which were hindering his access to his work area. He attempted to contact a shipper to move the pallets, but was unsuccessful. He then began to move the pallets himself. Lloyd approached the Plaintiff and began to yell

at him for moving the pallets. The Plaintiff then told Lloyd to go get his supervisor, as he had been instructed. Instead, Lloyd escalated his yelling, and grabbed the Plaintiff by his wrists, pushing the Plaintiff around, and restraining him, The Plaintiff yelled for his supervisor, Duane Schnipke, who was in his office. The Plaintiff also broke Mr. Lloyd's hold and struck out at him once, his blow glancing off of Mr. Lloyd's uniform, then struck out a second time, making contact with Mr. Lloyd's chest, and pushing Mr. Lloyd back, away from him. Schnipke was in his office, when he heard the Plaintiff and Lloyd yelling. He exited his office, which was only 25 feet from the altercation, and observed the Plaintiff striking Lloyd's chest. Lloyd is about six feet, and about 220 pounds. The Plaintiff is much shorter and lighter. Schnipke did not think that the Plaintiff was trying to knock Lloyd to the ground, Schnipke approached the two and separated them. The Plaintiff continued to demand that Schnipke get Lloyd away from him, emphatically. Schnipke stood between the two, but no farther scuffle ensued. Schnipke did not witness anything that had happened prior to the Plaintiffs striking Mr. Lloyd.

The Plant Manager, Dilip Teppara, also heard the ruckus, and, basically saw the same thing that Schnipke saw. He noted that both Lloyd and the Plaintiff were "yelling and screaming," though he could not make out what was being said. Schnipke and Teppara sent Lloyd to his office, and the Plaintiff back to his workstation. The Plaintiff notified both Schnipke and Teppara that he was defending himself against physical violence from

Lloyd. The Plaintiff asked to speak to Teppara, who assured him that he would talk to him about the situation. Lloyd was interviewed and asked to give "his side" of the story. Lloyd stated that he did not remember how it started. He admitted that he was arguing with the Plaintiff, and did not remember anything that was said. No one interviewed the Plaintiff. No one asked him for "his side" of the story. Though the Plaintiff had asked to speak with Mr. Teppara, the Plant manager, about the situation, and though Teppara did assure that Plaintiff that he would meet with him, he did not. Schnipke *was* aware of Lloyd's past history of repeated violence against co-workers, yet he did not consult Lloyd's file, He did not consult the Plaintiffs file. He was aware that there was a past history of physical aggression between the Plaintiff and Lloyd, in which, in each and every circumstance, Lloyd was the aggressor. Schnipke also recognized that Lloyd should have gone to his supervisor rather than continue to argue and escalate hostilities. Teppara was aware that there had been clashes between the Plaintiff and Lloyd in the past. He was aware of the car-keying incident, and had presided over the incident report and investigation involving Lloyd's grabbing the Plaintiff by the arm. However, he did not review either man's records. Without further investigation, Schnipke and Teppara terminated the Plaintiff. Schnipke typed up a letter and a statement concerning the termination. Teppara signed the statement and letter. This was all done before anyone spoke to the Plaintiff. Then Schnipke met with the Plaintiff and told him that he was